GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

APIIC – Ratification of the action of the APIIC for cancelling the Development Agreement dt.17.07.2008 entered with M/s. Unitech Limited for development of Integrated Vizag Knowledge City in an extent of 1,750 acre at Kapuluppada village, Bheemunipatnam (M), Visakhapatnam District duly forfeiting the amounts paid by M/s. Unitech Limited – Orders – Issued.

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INDUSTRIES AND COMMERCE (INFRA) DEPARTMENT

G.O.MS.No. 77 Date:14-09-2015

Read the following:

1. Letter of Award dt.24.09.2007
2. Development Agreement dt.17.07.2018.
3. Letter No.CGM(P)/APIIC/IT Parks/K-uppada/06, dt.26.04.2011 of ED, APIIC addressed to M/s. Unitech Limited.
4. From the VC&MD, APIIC Lr.No.CGM(P)/APIIC/IT Parks/ Kuppada /06, dt.30.04.2011.
5. AG Opinion No.25/2011, dt.31.05.2015.

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ORDER:

For development of an "Integrated Vizag Knowledge City" for locating knowledge based industries an extent of 1,750 acres of land in Sy.No.314 of Kapuluppada of Village of Bheemunipatnam (M), Visakhapatnam District was handed over to the APIIC Limited, on 8.11.2004. Accordingly, the APIIC issued notification dt. 08.08.2007 calling for bids for development of an "Integrated Vizag Knowledge City". (5) Companies have filed the Bids. After technical evaluation, the Bid was confirmed in favour of M/s Unitech Ltd and the letter of Award was (LoA) was issued on 24-09-2007 and subsequently a Development Agreement (DA), dated 17.07.2008, was executed. For the purpose of execution of this project, an SPV called "Unitech Vizag Projects Limited" was incorporated by M/s Unitech Limited. Basing on the request of M/s Unitech Limited, the sale deed dated 08.07.2008, was executed for an extent of 05 acres in favour of the SPV for establishing its site office.

2. As per the Bid condition, M/s Unitech Limited has paid only an amount of Rs.255 Crores as on 25.10.2008 against the total amount of Rs.350 Crores. As such an amount of 95 Crores is due towards land cost. As per the Bid and LoA, M/s Unitech Limited has to submit the Bank Guarantee for the Annual Minimum Guarantee amount quoted by it (in this case for Rs.2,938 crores over a period of 10 years) at the time of execution of the Development Agreement (DA). Further, the DA also provides for providing the Bank Guarantee (BG) on yearly basis linking it with the accounting year in which the revenue recognition date occurs.

3. Further, M/s Unitech Limited, has violated various terms and conditions like payment of the land cost and the Bank Guarantee, non-implementation of the project. Some of the major breaches and violations are briefly stated below:

a) The APIIC has stated that M/s Unitech Limited has paid only an amount of Rs.255 Crores against the total amount of Rs.350 Crores. An amount of Rs.95 Crores is still due towards land cost, in spite of several opportunities given.

(P.T.O)

b) As per the terms and conditions of the Bid Document, the successful bidder has to pay annual minimum guaranteed amount for the consecutive period of (10) years and submit a BG for the said amount. The same was not submitted as provided in the bid.

c) M/s Unitech Limited failed to submit the DPR within the stipulated time as provided in the Bid.

d) As per the Bid Document, the developer shall secure financial closure within six months of the execution of Development Agreement, but the financial closure was not obtained.

e) M/s Unitech Limited has not made any physical progress to comply with the terms & conditions of the Development agreement and for the execution of the project. Thus, the project was not implemented within the stipulated time.

4. The Principal Accountant General in its audit findings contained in its letter dated 30.12.2012, has raised objection stating that the land was allotted @ Rs.20 lacs per acre which is lesser than the market rate and also pointed out the non- payment of the balance land cost and also objected the post bid amendments favouring M/s Unitech Limited.

5. In view of the various breaches of the terms and conditions of the project by M/s Unitech Limited, APIIC Limited vide letter dt.15.04.2011, has informed M/s. Unitech Limited that the agreement stands breached and rescinded, duly pointing out the violations and also informing that the Development Agreement itself has deviated from the Bid Document & LoA and hence not binding on APIIC Limited. Subsequently, the APIIC by letter dt.26.04.2011 has informed M/s. Unitech Limited that the amounts paid by them towards land cost, etc. have been forfeited.

6. M/s Unitech Limited has addressed a letter dt.27.05.2011 to APIIC for invocation of Arbitration as per the Development Agreement dt.17.07.2008 and nominating Justice C.K. Thakker (retired) as arbitrator. The Company has requested the APIIC to appoint the Arbitrator as per the Development Agreement within 30 days of the letter.

7. Further, after examining the legal aspect APIIC Ltd has replied to M/s Unitech Limited, vide letter dt.10.04.2012, stating that there are no arbitrable disputes and denied the arbitration.

8. Government observed that the Development Agreement was not approved by the Board of APIIC and the same could not have been executed without receiving the total land cost, Bank Guarantee. Moreover, the Development Agreement was in deviation of the Bid and Letter of Agreement and M/s Unitech Limited was informed that the same is not binding and further that there are no arbitrable disputes. The condition of external infrastructure in the Development Agreement which is being cited as major reason for non implementation of the project is not provided for in the bid document which was the basis for selection of the Developer. The Development Agreement, so executed, is favouring M/s Unitech Limited in more way than one. Moreover, since M/s Unitech Limited did not even pay the land cost within the stipulated time and did not implement the project within specified time, the action taken by the APIIC in cancellation of the project and the forfeiture of the amount is justified as per the bid and the Letter of Award.

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9. APIIC is in continuous possession of 1,750 acres (except (5) acres for which sale deed was executed as mentioned above). APIIC has entrusted the work of preparation of layout as per VUDA norms in the above lands and the preparation of estimates for providing infrastructure viz road, drains, water supply, power supply etc. to M/s. Shilpaakruti Associates, Vishakapatnam and the same is under progress.

10. Government after careful examination of the matter, hereby ratify of the action of the APIIC in having cancelled the Development Agreement dt.17.07.2008 entered with M/s. Unitech Limited for development of Integrated Vizag Knowledge City, at Kapuluppada Village of Bheemunipatnam (M), Visakhapatnam District and forfeiture of the amounts paid by M/s. Unitech Limited for non implementation of the project of Integrated Vizag Knowledge City Project" by M/s. Unitech Limited.

11. The Vice Chairman & Managing Director, Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC) shall take further necessary action in the matter, accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

S.S.RAWAT
SECRETARY TO GOVERNMENT &
COMMISSIONER FOR INDUSTRIAL PROMOTION

To
The Vice Chairman & Managing Director, APIIC Limited, Hyderabad.
Copy to:
P.S to C.S to Govt. of A.P.
P.S. to Secretary to Chief Minister,
P.S. to Secy. to Govt.& CIP., Ind. & Com. Dept.
The G.A. (Cabinet) Department.
Sc/Sf

//FORWARDED: : BY ORDER//

SECTION OFFICER